

**STATE BOARD OF EQUALIZATION**

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April 26, 1991

Mr. W--- V--- W---
P--- W---
P.O. Box XXXX
--- ---, California XXXXX-XXXX

Re: SR -- XX-XXXXXX
A--- G--- Corporation

Dear Mr. V--- W---:

I have been asked to respond to your February 22, 1991 letter to Mr. John Abbott requesting a legal opinion regarding the applicability of California sales and use tax to certain transactions of your client A--- G--- Corporation (A---). Specifically, A--- has a contract with M--- M--- Corporation to build --- engines in California. Under the contract, A--- would ship the engines to the customer in Florida prior to transfer of title.

A--- is scheduled to complete the engines in 1991, however, M--- cannot take delivery of the property until 1992. The parties propose to amend the contract so that title is transferred to M--- in 1991, when the manufacturing process is complete. A--- will keep the property in California until M---'s Florida facility is ready. You have asked whether the above-described transaction is exempt as a sale in interstate commerce.

Unless specifically excluded or exempted from taxation by statute, all gross receipts from retail sales or purchases for use within this state of tangible personal property are subject to either sales or use tax. (Rev. & Tax. Code § 6051.) The use tax is imposed upon the storage, use or other consumption in this state of tangible personal property purchased from any retailer. (Rev. & Tax. Code § 6201.) "Storage" and "use" do not include retention of property "for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state..." (Rev. & Tax. Code § 6009.1.)

Revenue and Taxation Code section 6396 exempts from the computation of sales tax:

"the gross receipts from the sale of tangible personal property which, pursuant to the contract of sale, is required to be shipped and is shipped to a point outside this state by the retailer by means of: (a) facilities operated by the retailer, or (b) delivery by the retailer to a carrier, customs broker or

forwarding agent, whether hired by the purchaser or not, for shipment to such out-of-state point.”

In our opinion, the sale is exempt from tax provided (1) that the contract specifies that the goods are to be manufactured in advance and held for later out-of-state shipment; (2) that the goods are in fact shipped out-of-state within a reasonable time; (3) that the goods are shipped in accordance with the requirements of section 6396 quoted above.

Please feel free to contact us again if you have further questions.

Sincerely,

Stella Levy
Tax Counsel

SL:cl